

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	12- CR -107
)	
vs.)	
)	
)	
EARL WARNER)	

MOTION IN LIMINE RE: DISC #1

Defendant, Earl Warner, through his undersigned counsel, files this *Motion in Limine Re: Disc #1* and in support thereof avers as follows:

1. At the preliminary pre-trial conference on Friday, January 3rd, counsel learned the government had produced a disc with images. These images match up with the 7 counts Warner is facing. The government seeks to admit all of them – which is well over 100. For Instance, at Count 1, there are 40 images. At Count 2, there are 24

images. At Count 3, there are 29 images. Count 4, there are 24 images. Count 5 has 2 video clips totaling 83 seconds. Count 6 is one videoclip a little over 4 minutes in length.

2. Each of these images has an identifier attached to it. It is this identifier which counsel will make reference to in this motion. Before giving some particulars, let's take a macro view of this collection of images. There is no argument towards many of the images. For instance, the videoclip supporting Count 6. This has a voice which the government believes is that of Warner. As for the other counts, there are images under each categorization that would appear to be appropriate for that charge. However, there are plenty under each Count which, for various reasons, should not be part of this case.

Count 3. The image at 560 is repetitive of the pose at 559. The image at 562 is very similar to that at 561. Just like 564 is repetitive of 563. There is a sequence of photos, 554 to 565, with a female wearing Pittsburgh Steelers cheerleader outfit. The female is fully clothed in each of these. At 566 the photo changes to material that could be described as CP. Does the government need all 12 photos with her

wearing the outfit as evidence ? At some point, the scales of fairness tip towards the needless presentation “of cumulative evidence” and “unfair prejudice”. F.R.E. 403. Going further, 567 is a closer shot than the image at 566. What new relevant information is reflected in that 2nd image ? There is none – the CP is seen in both. Admission of both images is cumulative and unfairly prejudicial. Looking at 568, 569 and 570, you essentially see the same pose. 1 is enough. 2 is too much. 3 is pilling on. Images at 573 and 574 reveal enough of a Steelers outfit to recognize it as such and both show CP. The images at 575 and 576 are essentially the same shot – both reflect the Steelers outfit and breasts.

Similar detailed argument can be made for the material listed in the other Counts however counsel feels a bit constrained by space based upon the knowledge gained at the preliminary pre-trial conference to keep such matters short and to the point.

In conclusion, Warner ask the Court to review this material with the aid of advocacy before ruling upon the more than 100 pieces of evidence the government wants to have admitted.

Respectfully submitted,

/s/David B. Chontos

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